IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 821 OF 2006

IN

ARBITRATION PETITION NO. 371 OF 2005

IN

AWARD NO. 7 OF 2004

Shah Thakur & Sons.... ... Appellant.

Versus

National Bank for Agriculture and
Rural Development (NABARD)... ... Respondent.

Mr.Vijay Hansaria a/w Mr.Sanjay Sarin i/by Mr.K.N.Damani for the Appellant.

Mr.Virag Tulzapurkar a/w Ms. Alpana Ghone i/by M/s. Kanga & Co. for the Respondent.

CORAM : R. M. LODHA, and
S. A. BOBDE, JJ.

DATED : 29TH NOVEMBER, 2006.

P.C.:

We heard Mr. Vijay Hansaria, Senior Counsel for the appellant and Mr. Virag Tulzapurkar, Senior Counsel for the respondent.

2. The arbitrators vide award dated 22nd March, 2004 granted compensation on account of loss caused as a result of the delay attributable to the respondent in

the sum of Rs.3,20,00,000/- to the appellant against the claim of Rs.18,03,87,249/-. As regards the claim nos.2 to 7, the arbitrators rejected the said claim and also recorded that claim nos.3 to 7 were not pressed by the claimant during the hearing. The arbitrators also rejected the claim no.8 pertaining to interest pendentelite.

3. In the petition under Section 33 of the Arbitration Act, 1940 challenging the said award, various grounds were set up, particularly with regard to rejection of claim nos.2 to 7 and denial of interest pendentelite.

4. The learned Single Judge did not find any merit in challenge to the award and, accordingly, dismissed the arbitration petition and made the award rule of the Court vide order dated 14th November, 2005.

5. The Senior Counsel for the appellant, firstly, submitted that refusal to award the interest pendentelite by the arbitrators was not justified. He brought to our notice the order passed by the Supreme Court on 11th December, 1991 whereby the claim amount deposited by the respondent was allowed to be withdrawn by the Supreme Court on furnishing the bank guarantee by the appellant to the satisfaction of the

High Court and with the further direction that the bank guarantee shall be kept alive for the principal amount (amount withdrawn plus 13% interest per annum) and submitted that since on the amount that is to be returned by the appellant, the interest is payable to the respondent, the respondent too must have been directed by the arbitrators to pay interest on the amount of award i.e. Rs.3,20,00,000/-.

6. The submission does not impress us. The amount that was allowed to be withdrawn by the appellant was pursuant to the order of the Supreme Court dated 11th December, 1991 and that cannot be set up as a ground to justify the appellant's claim of pendentelite interest. Since the award is a non-speaking award under the old Act (1940 Act) and the pendentelite interest has been rejected by the arbitrators, it is not open to us to probe the reasons there-for.

7. The Senior Counsel for the appellant then contended that the statement recorded by the arbitrators in the award that claim nos.3 to 7 were not pressed by the claimant during the hearing is factually incorrect. He submits that there is nothing in the proceedings of the arbitrators to show that claim nos.3 to 7 were not pressed by the claimant. The Senior Counsel would submit that in the petition

filed under Section 33 of the Arbitration Act, 1940 a specific plea has been set up that the claim nos.3 to 7 in fact were pressed before the arbitrators.

8. Nothing has been shown to us that may persuade to accept the submission of the Counsel for the appellant that claim nos.3 to 7 were in fact pressed. We wanted the Senior Counsel for the appellant to show us any material or evidence that was placed by the appellant before the arbitrators in support of claim nos.3 to 7. Nothing was shown to us. As a matter of fact the impugned order passed by the learned Single Judge also does not show that this aspect was pressed by the appellant before the learned Single Judge that claim nos.3 to 7 were pressed before the arbitrators and that statement recorded in the award in this regard is wrong. This contention also does not have any merit.

9. The Senior Counsel invited our attention to the minutes dated 19th August, 2006 of the Committee set up by the Chairman of the NABARD (respondent) for considering the compromise proposal given by the appellant and few other enterprises and submitted that as per this agreement interest is payable by the respondent on the award amount. Particularly, our attention was invited to the following part of the agreement :

"The interest rate arrived in this regard shall be made applicable to both the parties i.e. NABARD will also be liable to pay interest on the award money in respect of Kandivli Arbitration at the same rate."

10. The Senior Counsel for the respondent submitted that this agreement has nothing to do with the present proceedings wherein challenge has been made to the award dated 22nd March, 2004.

11. We do not intend to enter into any controversy about effect of the aforenoted compromise. If the appellant feels that aforenoted compromise applies to the present award, it must take up the matter with the Chairman of the respondent but that cannot be set up as a ground in challenging the award.

12. Lastly, the Senior Counsel for the appellant submitted that in the award dated 3rd November, 1993 regarding the disputes and differences which arose out of the principal agreement dated 23rd December, 1983, amenities agreement dated 23rd December, 1982 and supplemental agreement dated 24th July, 1985, were referred to the arbitrators and in that award, interest pendentelite, at the rate of 10% p.a. from

the date of the statement of claim was awarded and, thus, the present arbitrators committed legal misconduct in not awarding pendentelite interest in the present award. The contention is only noted to be rejected. This contention has neither been set up as a ground in the petition nor in the memo of appeal before us. As a matter of fact, upon perusal of the impugned order, we find that no such argument was canvassed before the learned Single Judge. In this view of the matter, the submission does not deserve consideration having been made for the first time orally.

13. All in all, no interference is called for in the impugned order. Appeal is dismissed in limine.

Sd/-

(R. M. LODHA, J.)

Sd/-

(S. A. BOBDE, J.)